IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4110 of 1995

PARASMAL
V/S
STATE & ORS

Mr. ARVIND SHRIMALI for Mr. DD THANVI, for the appellant / petitioner

Mr. BL BHATI, DY.G.A., for the respondent

Date of Order : 5.11.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition the petitioner seeks to challenge the communication, Annex.5 dated 20.11.95, whereby the Tehsildar had restrained the petitioner from carrying on mining operations as the land has been declared Sivay Chak, thus, it has become a government land.

The contention of the petitioner is that the petitioner was granted mining lease pursuant to the order Annex.1, vide Annex.2 on an area of 100 x 100 meter way-back on 29.5.1986 for a period of 10 years, and it is informed that the same has been renewed thereafter also. That being the position, the Tehsildar had no jurisdiction to address this communication like Annex.5.

No reply has been filed, as such the facts pleaded in the writ petition have to be considered to be uncontroverted, and if considered from that standpoint, it

is clear that the petitioner was granted mining lease, and if the petitioner is operating on the land on which the mining lease has been granted, simply because that land happens to be subsequently declared to be Sivay Chak land, the petitioner's mining operations cannot be interfered with.

Consequently, the writ petition is allowed. The notice Annex.5 is quashed, and it is clarified that the petitioner will be entitled to undertake mining operations on the land for which he holds mining lease rights as per Annex.1 and 2. The parties to bear their own costs.

(N P GUPTA),J.

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